

Cross Reference to Deed
Instrument No. _____

Project No. _____
Parcel _____

REGULATED DRAIN ENCROACHMENT PETITION

PETITION FOR ENCROACHMENT OF RIGHT-OF-WAY OF:

(NAME OF REGULATED DRAIN)

IN THE VICINITY OF _____

(ADDRESS)

BY _____,
(NAME) (TITLE)

ON BEHALF OF _____
(NAME AND ADDRESS OF PETITIONER)

Petitioner herein petitions the Board of Public Works ("Board") to encroach upon the right-of-way of a portion of the above-referenced regulated drain, and represents to the Board as follows:

1. The Petitioner recognizes that, by law, the Board or its authorized representative holds a permanent right-of-entry over, across, and upon land containing regulated drains, extending at right angles seventy-five (75) feet from the centerline of a pipe and from the top edge of each bank of an open ditch (I.C. 36-9-27-33). As such, the Petitioner may not erect permanent structures within the right-of-way or use such land in any manner inconsistent with the proper operation of the regulated drain without first having obtained the written consent of the Board.
2. The Petitioner seeks encroachment upon the regulated drain right-of-way for the following reasons: _____

3. The portion of the regulated drain right-of-way which would be affected by the encroachment is contained entirely within property owned or leased by the Petitioner and:
 - (a) A plan showing the location of the regulated drain right-of-way at present in relation to the Petitioner's property is attached hereto and incorporation herein as Exhibit A;
 - (b) A legal description of the regulated drain and right-of-way is attached hereto and incorporated herein as Exhibit B; and
 - (c) A description and location of any structures, facilities, and/or appurtenances that will encroach upon the regulated drain right-of-way is attached hereto and incorporated herein as Exhibit C.
4. As a condition of permission to encroach upon the regulated drain right-of-way, the Petitioner agrees to perform any and all necessary maintenance and repair of the regulated drain to assure the continued and proper operation of the regulated drain itself, as required by the City of Indianapolis, Department of Public Works ("DPW").
5. As a condition of permission to encroach upon the regulated drain right-of-way, DPW may require a compensatory perpetual drainage easement and right-of-way. If required, the Petitioner must grant such an easement and right-of-way to the DPW, in a form acceptable to the DPW, as attached hereto as Exhibit D.
6. The Petitioner recognizes that a Drainage Permit as required under Section 561-221 of the Revised Code of the Consolidated City of Indianapolis/Marion County, Drainage and Sediment Control, must be obtained for any land alteration accompanying the encroachment.
7. The Petitioner warrants that no property above or below the Petitioner's property in the watershed area served by the regulated drain will be adversely affected by the encroachment and/or any accompanying land alteration, nor will the Petitioner interfere with the drainage function of the regulated drain or the ability of the City of Indianapolis, the Department of Public Works, the Board, or their officers, employees, agents or assigns to maintain the regulated drain for such function.
8. The Petitioner agrees that no other structures, facilities and/or appurtenances, other than those shown on Exhibit C, shall encroach upon said regulated drain and that such limitation shall be construed as a condition upon which this grant is made and accepted and for breach of which the Board may recover damages (including legal fees) and, without prejudice thereto, may by written order of the Board, compel the Petitioner, its heirs, successors, agents, and/or assigns to remove all or any part of said encroachment(s).

9. The Petitioner acknowledges that the grant of this Encroachment Petition may involve some risk to the Petitioner, and the Petitioner, as part of consideration for the granting of this Encroachment Petition, hereby waives for itself, its heirs, successors, agents and assigns any right to seek damages for or on account of loss of, or injury to, any structures, facilities and/or appurtenances upon said right-of-way resulting from the repair, maintenance or improvement of the regulated drain, whether attributable to the fault, failure or negligence of the City of Indianapolis, the Department of Public Works, the Board, or their officers, employees, agents or assigns.
10. The Petitioner, its heirs, successors, agents and assigns by acceptance of this instrument, hereby agrees to and shall at all times indemnify, protect and hold harmless the City of Indianapolis, the Department of Public Works, the Board, and their officers, employees, agents and assigns from and against all costs and expenses resulting or arising from any and all losses, damages, suits, claims or demands which the City of Indianapolis, the Department of Public Works, the Board, and their officers, employees, agents, and assigns may suffer, sustain or be subjected to by reason of the grant of this Encroachment Petition.
11. The Petitioner, its heirs, successors, agents, and assigns, by acceptance of this instrument, hereby agrees to abide by, if required, the Statement of Commitments, attached hereto and incorporated herein as Exhibit "E".
12. The Petitioner, its heirs, successors, agents, and assigns, by acceptance of this instrument, hereby agrees that all covenants, agreements, and commitments contained in this Petition that affect the use and burden on the Petitioner's property shall be and constitute covenants which shall run with the land.
13. The Petitioner shall duly record this Petition and all related Exhibits, including, if required, the Compensatory Grant of Perpetual Drainage Easement and Right-of-Way (Exhibit D); and provide a copy of this recorded Petition to DPW.
14. This instrument shall not be construed as a release of any rights of the City of Indianapolis or Department of Public Works in the aforesaid regulated drain other than the right to object to the specific encroachment described herein.

Petitioner affirms that no unauthorized alterations of this document have taken place.

(Rest of page left blank, signatures to follow)

IN WITNESS WHEREOF, Petitioner has executed this instrument on the _____ day of _____, 20 ____ .

Signature

Printed

Signature

Printed

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, Petitioner herein, who acknowledged the execution of the foregoing instrument to be his/hers/its free and voluntary act and deed.

Witness my hand and notarial seal this ____ day of _____, 20 ____.

County of Residence

Commission Expiration Date

Notary Public Signature

Printed

STAFF RECOMMENDATION

I, _____, _____,
(Name) (Title)

recommend that this Regulated Drain Encroachment Petition be:

APPROVED: _____, subject to the Commitments (check applicable one):

_____ None

____ Attached hereto and incorporated herein as Exhibit E

DENIED: _____, due to _____

(Signature)

(Printed)

(Date)

ORDER

Pursuant to the Department of Public Works Resolution No. _____, 20 ____, I, Lori Miser,
Director of the Department of Public Works, hereby sign the above Petition for Encroachment of
Right-of-Way of the _____ Regulated Drain, on
behalf of the Board of Public Works.

ORDERED this _____ day of _____, 20 ____.

DEPARTMENT OF PUBLIC WORKS

Lori Miser, Director

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Lori Miser, Department of Public Works, who acknowledged the execution of the
foregoing instrument on the ____ day of _____, 20 ____.

County of Residence

Notary Public Signature

Commission Expiration Date

Printed Name

This instrument was prepared by Justin Paicely of the Office of Corporation Counsel, 200 E. Washington Street, Suite 1601, Indianapolis, Indiana 46204.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Ellen Hurley, Office of Corporation Counsel

2-11-16

EXHIBIT D

Cross Reference to Deed
Instrument No. _____

Project No. _____
Parcel _____

GRANT OF PERPETUAL DRAINAGE EASEMENT AND RIGHT-OF-WAY

THIS INDENTURE made this _____ day of _____, 20 ____, by and between _____, ("GRANTOR") and the City of Indianapolis, Department of Public Works ("GRANTEE");

WITNESSETH THAT:

WHEREAS, GRANTOR must obtain from GRANTEE a drainage permit, pursuant to Chapter 561 of the Revised Code of the Consolidated City and County, Indiana, for construction of a development known as _____; and

WHEREAS, GRANTEE has determined that GRANTOR must grant it a perpetual drainage easement and right-of-way to assure that GRANTOR's drainage plan, as approved by GRANTEE and described in GRANTEE's Drainage Division File No. _____, incorporated herein by reference ("Drainage Plan"), will be established and maintained, or to otherwise assure satisfactory drainage.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth and other valuable consideration, the receipt of which is hereby acknowledged, GRANTOR for itself, its successors, and assigns does hereby grant, convey and warrant unto GRANTEE a perpetual drainage easement and right-of-way, with the right, privilege, and authority in GRANTEE to maintain, repair, continue, and improve the drainage facilities described in the Drainage Plan ("Drainage Facilities") located under, upon, over, and across the real estate owned by GRANTOR and situated in the County of Marion, State of Indiana, described in **Exhibit 1**, attached hereto and incorporated herein by reference.

A diagram map showing the route, courses, and distances through the above real estate and the width of the easement and right-of-way is attached hereto and incorporated herein by reference as **Exhibit 2**.

GRANTEE shall have the right to enter along, under, over and upon said easement and right-of-way to install, repair, maintain and continue such Drainage Facilities and to make such alterations and improvements to the Drainage Facilities as GRANTEE deems may be necessary or useful. GRANTEE shall also have the right of ingress and egress, for temporary periods only, over GRANTOR's property adjoining said easement when necessary to install, repair, maintain, continue, or improve the Drainage Facilities. GRANTEE shall not otherwise enter upon GRANTOR's real estate adjoining said easement and right-of-way. GRANTEE may remove any structure, pavement, or landscaping on the easement to inspect and/or

maintain the Drainage Facilities without liability for replacement or repair of such structure, pavement, or landscaping.

GRANTEE may relinquish this easement and right-of-way, but only if GRANTOR can assure, to the satisfaction of GRANTEE, continuing and adequate drainage absent this easement and right-of-way.

GRANTOR and GRANTEE agree that this easement and right-of-way shall not create in GRANTEE a duty to maintain, repair, continue, and improve the Drainage Facilities but only a right so to do. The duty to maintain, repair, continue, and improve the easement, right-of-way, and Drainage Facilities shall remain with GRANTOR and shall include, but not be limited to, mowing grass and removing weeds, silt, debris and any other obstructions to the free and unobstructed use of the easement and right-of-way or the Drainage Facilities.

GRANTOR covenants that it will not erect, maintain, or allow to continue on the portion of the GRANTOR's real estate in which the easement and right-of-way is granted herein any building or other structure or obstruction to the free and unobstructed use of the easement and right-of-way or the Drainage Facilities without express written permission from GRANTEE. Such permission, when duly recorded, shall run with the real estate.

GRANTOR covenants that it is the owner in fee simple of said real estate, is lawfully seized thereof and has a good right to grant and convey the foregoing easement and right-of-way therein; that it warrants the quiet use and enjoyment thereof; and that it will defend GRANTEE's title in said easement and right-of-way against all claims.

The easement and right-of-way granted herein, and the associated benefits and obligations, shall run with the real estate.

This indenture shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

GRANTOR hereby affirms that no unauthorized alterations of this document have taken place.

[REST OF PAGE LEFT BLANK; SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, GRANTOR has set its hand and seal as of the day and year first written above.

(WRITTEN) SIGNATURE

(WRITTEN) SIGNATURE OF SECOND
GRANTOR, IF APPLICABLE

(PRINTED) SIGNATURE

(PRINTED) SIGNATURE OF SECOND
GRANTOR, IF APPLICABLE

TITLE, IF GRANTOR IS CORPORATION

[illegible]

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, Grantor herein, who acknowledged the execution of the foregoing conveyance to be his/her voluntary act and deed.

WITNESS my hand and Notarial Seal this _____ day of _____, 20____.

County of Residence

Signature

Commission Expiration Date

Printed Name

RECOMMENDED FOR APPROVAL:

Stefan Wolfla, Infrastructure Manager,
Department of Code Enforcement

APPROVED AS PER LEGAL FORM:

_____(signature) _____(print)

Office of Corporation Counsel

CITY OF INDIANAPOLIS:

Lori Miser, Director by designee,
Department of Public Works

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Subscribed and sworn to me this _____ day of _____, 20_____.

COUNTY OF RESIDENCE

NOTARY PUBLIC SIGNATURE

COMMISSION EXPIRATION DATE

PRINTED NAME

This document was prepared by the Kathryn M. Box, Office of Corporation Counsel, 200 E. Washington Street, Suite 1601, Indianapolis, Indiana 46204

“I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number, unless required by law” Ellen Hurley, Office of Corporation Counsel

EXHIBIT E

COMMITMENTS
CONCERNING THE USE OR DEVELOPMENT
OF REAL ESTATE MADE IN CONNECTION WITH A
REGULATED DRAIN ENCROACHMENT PETITION

In consideration of the grant of the Regulated Drain Encroachment Petition, the Petitioner hereby makes the following Commitments:

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

Satisfactory completion of the Commitments specified herein shall be construed as a condition upon which this grant is made and for breach of which the Board may recover damages (including legal fees) and, without prejudice thereto, may revoke its grant and seek the removal of all or any part of said encroachment(s).

These Commitments shall be binding upon the Petitioner, its heirs, successors, agents and assigns. These commitments may be modified or terminated by written order of the Board.

S:\Common\PRMT\INFRASTR\LEGAL DOCUMENTS 1/28/13